



April 23, 1999

Ms. Sherry R. Robinson  
Criminal District Attorney  
Waller County  
836 Austin Street, Suite 105  
Hempstead, Texas 77445

OR99-1096

Dear Ms. Robinson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the “act”), chapter 552 of the Government Code. Your request was assigned ID# 123723.

Waller County (the “county”) received a request for “a copy of the laboratory test report on the high performance cold mix offered by Pavers Supply Company.” You contend that the requested information is not subject to the act, and alternatively that the information is excepted from disclosure pursuant to sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed a representative sample of the documents at issue.<sup>1</sup>

Since the property rights of third parties may be implicated by the release of the requested information, this office notified Paver’s Supply Company (“Paver’s”) about the request for information. *See* Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305

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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). This office received a response from Paver's supplier, Unique Paving Materials Corporation ("Unique"). On behalf of both Unique and Paver's, Unique contends that the requested information is excepted from disclosure pursuant to section 552.110 of the Government Code.

We begin by considering whether the requested information is subject to public disclosure under the act. You contend that the information does not fall within the definition of "public information," and therefore, is not subject to the act. Section 552.002(a) provides

In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). You inform us that

The information requested does not belong to Waller County, and generally, we would not have a right of access to it. It was sent to the County Engineer, confidentially, so that the Engineer could be assured that it met the bid specifications.

The fact that the information at issue is in the county's possession and is being maintained in connection with the transaction of official business makes the information subject to public disclosure under the act.

Section 552.110 protects the property interests of private parties by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. The Texas Supreme Court has adopted the definition of "trade secret" from the Restatement of Torts, section 757, which holds a "trade secret" to be

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a

business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). If a governmental body takes no position with regard to the application of the “trade secrets” branch of section 552.110 to requested information, we accept a private person’s claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5 (1990).<sup>2</sup> Having reviewed Unique’s arguments, we find that Unique has established a *prima facie* case for protecting the requested information under the trade secret prong of section 552.110. Therefore, the county must withhold the information from disclosure.

Because we are able to resolve this matter under section 552.110, we do not address the other arguments against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: “(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and other involved in [the company’s] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.” RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Ref.: ID# 123723

encl. Submitted documents

cc: Mr. Brad Hubbard  
Hi-Performance Products, Ltd.  
P.O. Box 626  
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(w/o enclosures)